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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.470 OF 2025**

M/s. Mallikarjun Pipes & Cements Ltd.,
A company incorporated under the
Companies Act, 1956,
Having its registered office at
Dayanand Nagar, Dharbandora – Goa.
herein represented by its director,
Mr. Subhash Ramchandra Anvekar. ... Petitioner.

Versus

1. Shri. Dayanand A. Kotharkar,
(since deceased, Rep. by Legal heirs),
- a. Shri Yogesh D. Kotharkar,
S/o Late Shri Dayanand A. Kotharkar,
R/o H. No. 666, Post Angadi,
At Kothar, Karwar, Karnataka.
- b. Shri Suyog D. Kotharkar,
S/o Late Shri Dayanand A. Kotharkar,
R/o H. No. 666, Post Angadi,
At Kothar, Karwar, Karnataka. ... Respondents.

Mr. Yash Suhas Naik, Advocate for the Petitioner.
Mr. Shivraj Gaonkar, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.
RESERVED ON: 20th June, 2025
PRONOUNCED ON: 2nd December, 2025

ORDER:

1. Registry to waive office objections and register the matter.
2. The Petitioner, a company incorporated under the Companies Act, 1956, represented by its Director Shri Subhash Ramchandra Anvekar, who has filed the present Petition, whilst invoking the Supervisory jurisdiction of this Court, and has challenged order dated 27.01.2025, passed by the Industrial Tribunal and Labour Court, at Panaji, Goa. The order of the Industrial Tribunal, in turn, confirms the order dated 15.03.2024 passed by the Controlling Authority under section 10 of the Payment of Gratuity Act, 1972.

FACTS:

3. The Petitioner company, situated at Loliem, Pollem, Canacona, is engaged in the manufacturing of pipes and cement, in which the Respondent claims to be employed. It is the case of the Respondent No.1 that he is an employee in the Petitioner Company and thus filed a claim before the Controlling Authority, under Section 10 of the Payment of Gratuity Act, 1972 (Gratuity Act for short), in Case No. CLE/(PG-1)/2016, contending to be in continuous employment with Petitioner company, from 07.03.1994 to 10.09.2015 and was, therefore, entitled to gratuity upon retirement. However, the Respondent No.1 expired, pending the Application before the Controlling Authority, and thus his legal representatives were

brought on record.

4. The said claim was vehemently opposed by the Petitioner, contending that Respondent No.1 was never an employee at the Petitioner Company nor has he worked there for a continuous period of 21 days, and has not produced any document or records to substantiate his claim; the application is beyond the period of limitation. However, the said claim was allowed by the Controlling Authority, vide its order dated 15.03.2024, whilst directing the Petitioner to pay an amount of ₹74,025/- with simple interest @ 10% per annum from 11.10.2015; the Petitioner, on 13.05.2024, assailed the order dated 15.03.2024 in an Appeal bearing No. LC-PGA-01/2024, before the Industrial Tribunal and Labour Court, Goa, which was summarily dismissed vide order dated 27.01.2025, by the Industrial Tribunal, impugned herein.

5. Subsequently on 30.01.2025, the son of Respondent No.1 filed an application before the Controlling Authority to withdraw the gratuity amount deposited before it; the Controlling Authority issued notice dated 21.02.2025 to the Petitioner, which was received by the Petitioner on 07.03.2025, subsequent to the date of hearing i.e. 04.03.2025; the Petitioner vide its letter dated 07.03.2025 requested the Controlling Authority to intimate the next date of hearing, however the next date i.e. 24.03.2025 was not informed to the Petitioner and an order was passed allowing the application for

withdrawal of the gratuity amount deposited along with the interest.

SUBMISSIONS

6. The Advocate for the Petitioner, Mr. Yash Suhas Naik, advanced the following submissions:

- a. That the Petitioner never employed 10 or more persons for the Gratuity Act to be applicable. The burden of proof was wrongly shifted to the Petitioner, despite the Respondent producing no documentary evidence of employment or continuous service. The Tribunal relied only on oral testimony and computed gratuity on presumptions, rendering the findings perverse, unsustainable, and prejudicial to the Petitioner.
- b. According to the Petitioner, the provision of the Gratuity Act, not been applicable to an Industrial Unit, employing less than 10 workmen, the impugned order of the Controlling Authority was without jurisdiction; it was further argued that even if the Authority concluded that if there were more than 10 employees, there was no material produced to establish an employer employee relationship, between the Petitioner and the Applicant.
- c. That the Controlling Authority proceeded on the erroneous legal assumption that the Industrial establishment being

registered as a “factory” under the Factories Act, 1948, could not presume that there were more than 10 workmen employed therein, to apply the provisions of the Gratuity Act.

- d. It was argued that the impugned order dated 24.03.2025 was passed without notice of hearing and in violation of principles of natural justice, without affording any opportunity of arguing the matter.

7. The Advocate for the Respondents, Mr. Shivraj Gaonkar, advanced the following submissions:

- a. It was submitted that the Controlling Authority like the Industrial Tribunal under the Industrial Disputes Act, 1947, is a Tribunal, whose procedures are not restricted by rules of evidence and procedure, considering the labour legislation to be beneficial in nature; it was submitted that though the burden of proof does lie initially on the workmen, such burden should not be construed strictly since the Evidence Act is not applicable to the procedures of Tribunal. It would suffice if the workmen call upon the employer in whose possession relevant documents, such as muster rolls or wage registers, are maintained, to produce the same, and in the absence of such production, Tribunals can draw an adverse

inference on facts, the burden of which lies on the workmen to prove.

- b. It was further submitted that two authorities, on fact, after assessing the evidence on record have concurrently found that the Applicant was in employment of the Petitioner and that there were more than 10 workmen in the establishment; the findings on fact should not be easily upset in supervisory jurisdiction of this Court under Article 227 which should not reassess evidence as if the proceedings before this Court were an appeal.
- c. In furtherance of his arguments, the Respondent relied on the following case laws:
 - i. ***R.M. Yellatti v. Asstt. Executive Engineer, reported in 2006 (1) SCC 106.***
 - ii. ***Gauri Shanker v. State of Rajasthan, reported in 2015 (12) SCC 754.***

CONSIDERATIONS

8. On considering the pleading of the parties, the written statement of the Petitioner raises a preliminary objection on maintainability stating that the Applicant was not in continuous service of the Petitioner, and the Petitioner is not covered by the Gratuity Act, as it does not engage 10 or more employees. Apart from merely denying that the Applicant was its employee and stating that

it does not engage more than 10 workmen, there are no facts pleaded as to the number of workmen actually employed by the Petitioner. This is an evasive pleading as the number of employees and the rolls of the Petitioner ought to have been within its knowledge, as it is not the Petitioner's case that it did not run an Industrial establishment.

9. The workman examined himself and one co-worker, in whose evidence it has come on record that the applicant had worked with the Petitioner from 07.03.1994 till the date of his retirement, 10.09.2014 (21 years). His co-worker, Prashant Bandekar, has also led evidence to this effect, establishing that the applicant was in employment for a substantial period and certainly for a continuous period of 240 days in a year, to establish his continuous service. Thus, the initial burden having been discharged, the Petitioner ought to have at least placed on record its wage registers and employment registers, which were within its possession, to substantiate that the Applicant was neither its employee nor did it engage more than 10 workmen. There is absolutely no evidence led by the employee to this effect.

10. The Controlling Authority has, in a detailed judgement dated 15.03.2024, considered the evidence and arrived at a finding of fact that the Applicant was an employee of the Petitioner and the Petitioner engaged more than 10 workmen on the date of the claim. The fact that there was evidence led, that the Petitioner was

registered as a factory under the Factories Act, 1948, only corroborates this position, as registration under that Act would lead to a presumption that since it was running the factory with power, it employed more than 10 workmen, making the provisions of that Act applicable to it. This piece of evidence was only to corroborate the evidence led by the workmen, and in the absence of any cogent evidence to counter these facts, by the employer, the version of the workmen has been correctly accepted. The finding of the controlling Authority cannot be termed as perverse or not based upon the evidence on record.

11. In *R. M. Yellati* (supra) the Supreme Court has considered whether the strict rules of evidence under the Evidence Act would apply to the procedure to be followed by the Industrial Tribunal under the Industrial Disputes Act, 1947. Whilst considering this issue, it has examined the manner in which the burden of proof is discharged under various labour statutes and has recorded the following:

“17. Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged

earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.”

12. The ratio laid down in ***R.M. Yellati*** (supra) applies to the specific facts of the present case, where the workman himself and on examining his co-workmen, has brought on record, evidence to establish his relationship as well as the number of workmen employed at the establishment. In the absence of any evidence led, especially on the production of the relevant registers, by the employer, and considering that the rules of evidence do not strictly apply to the procedures in labour tribunals, the version of the workmen has been correctly accepted. There was no cause for interference with these findings of fact by the Appellate Court.

13. The Appellate Court/ Industrial Tribunal has re-appreciated the entire evidence and, in a very detailed judgement, has independently and concurrently arrived at the specific finding that the workman was employed in continuous service at the establishment and that the establishment employed more than 30 workmen in its unit. There is no infirmity in the findings arrived at by the Appellate Forum, which has correctly assessed the evidence and applied the correct law to the facts of the case.

14. As held in *Gauri Shanker* (supra), the scope of reviewing or reassessing evidence and scanning through the judgment of subordinate Tribunals in the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is very narrow. Specific reference to this principle is found in paragraph 20 of this judgment, which is quoted below:

“20. It is not in dispute that the workman was employed with the respondent Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground that they are not available, which contention of the respondent Department is rightly not accepted by the Labour Court and it has recorded the finding of fact holding that the workman has worked from 1-1-1987 to 1-4-1992. The Labour Court has drawn adverse inference with regard to non-production of muster rolls maintained by them; in this regard, it would be useful to refer to the judgment of this Court in Gopal Krishnaji Ketkar v. Mohd. Haji Latif wherein it was held thus: (AIR p. 1416, para 5)

"5.... Even if the burden of proof does not lie on a party the Court

may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v Manickavasaka Pandara", Lord Shaw observed as follows: (IA p. 103)

‘A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to, the courts the best material for its decision. With regard to third parties, this may be right enough—they have no responsibility for the conduct of the suit but with regard to the parties to the suit it is, in Their Lordships' opinion an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the court the written evidence in their possession which would throw light upon the proposition.’

This passage was cited with approval by this Court in a recent decision- Biltu Ram v. Jainandan Prasad (Civil Appeal No.941 of 1965, order dated 15-4-1968(SC)). In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in Bilas Kunwar v. Desraj Ranjit Singh (1914-15 42 IA 202 : (1915) 2 LW 830¹: (IA p. 206)

‘... But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents.’ ”

15. Applying these principles to the present case, the Authorities from which the present petition arises, having arrived at concurrent findings of fact on acceptable evidence, the case before me does not call for review in jurisdiction under Article 227 of the Constitution of India. The findings are therefore affirmed by me, and the Petition is rejected.

16. No Costs.

VALMIKI MENEZES, J.